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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN JAMES LATTIN,

Defendant and Appellant.

E054250

(Super.Ct.No. FVI1001065)

OPINION

APPEAL from the Superior Court of San Bernardino County. Miriam Ivy Morton, Judge. Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On September 1, 2010, a first amended complaint charged defendant and appellant Stephen James Lattin with battery with serious bodily injury under Penal Code¹ section

¹ All statutory references are to the Penal Code unless otherwise specified.

243, subdivision (d) (count 1); and assault with force likely to cause great bodily injury under section 245, subdivision (a)(1) (count 2). The complaint also alleged as to count 2 that defendant had inflicted great bodily injury on the victim under section 12022.7, subdivision (a).

On April 14, 2011, defendant entered a plea of guilty to assault under section 245, subdivision (a)(1) (count 2). In exchange, the remaining count and enhancement were dismissed. Moreover, as part of the disposition, case No. FVI1002712, was dismissed with a *Harvey*² waiver. On that same day, the trial court sentenced defendant to two years in state prison, reserved jurisdiction over victim restitution, and set a restitution hearing for April 29, 2011.

On June 16, 2011, at the continued restitution hearing, the parties reached an agreement regarding the amount of restitution due in this case, and a contested restitution hearing was set for June 24, 2011, in the *Harvey* waived case, case No. FVI1002712.

The only witness to testify at the June 24, 2011, restitution hearing was Gary Tomlin, an estimator at Sunshine Auto Body; he had over 20 years' experience. Tomlin testified that, on December 21, 2010, he gave an estimate to an individual named Ronald Annon to repair a 2001 Dodge truck. While the record is unclear, it appears that in case No. FVI1002712, defendant is alleged to have damaged this Dodge truck.

² *People v. Harvey* (1979) 25 Cal.3d 754.

Tomlin testified that he estimated the cost to repair the truck to be approximately \$4,000. He testified that this was the cost to repair all of the damage pointed out to him by Annon when he brought the truck in to get the estimate.

On cross-examination, Tomlin testified that the estimate included the cost to repair damage to both sides of the vehicle. Tomlin, however, was unable to testify regarding when the damage had occurred.

After Tomlin testified, the attorneys and the court seemed to agree that the police reports failed to indicate that the truck was damaged on both sides. The prosecutor agreed that the damage to the right side of the vehicle “did not need to be fixed as a result of [defendant’s] actions” The prosecutor then suggested the appropriate amount of restitution was \$2,032.54—the cost to repair just the left side of the truck.

Defendant indicated that he was not willing to stipulate to restitution in that amount. Instead, defendant wanted to continue the hearing to allow his attorney to do some further investigation.

The trial court indicated that it intended to complete the restitution hearing on that day. In response, defense counsel stated that, “just because I didn’t understand what I do now based on the testimony today, but if that’s the Court’s position, I will stipulate to the amount cited by [the prosecutor].”

The trial court replied:

“Unless you can give the Court some reasonable indication of what you could do to change the amount in favor of your client, the truck was damaged on the left side and was fixed or there was an estimate of that left side damage, and we have that figure now.

“If you can explain to the Court what it is you could possibly do to give reason or grounds for more time; otherwise, I’ll just go forward.”

Defense counsel responded: “No, I can’t say anything definitive in that regard.” The court then ordered restitution in the amount of \$2,032.54.

On August 10, 2011, defendant filed a notice of appeal “from the order of restitution entered against him[.]”

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.
RICHLI
J.